

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

WAYNE A. CARTER,

Plaintiff,

vs.

DR. KENNEDY,

Defendant.

NO. CV-06-318-MWL

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND DISMISSING  
COMPLAINT WITHOUT PREJUDICE

**1915 (g)**

Magistrate Judge Leavitt filed a Report and Recommendation on January 29, 2007, recommending Mr. Carter's civil rights complaint be dismissed with prejudice as Plaintiff's allegations failed to state an Eighth Amendment violation of deliberate indifference to his serious medical needs. Plaintiff did not amend or file a motion to voluntarily dismiss as directed. Plaintiff has filed nothing further in this action

There being no objections, **IT IS ORDERED** the Report and Recommendation is **ADOPTED in its entirety**. **IT IS ORDERED** the complaint is **DISMISSED WITHOUT PREJUDICE** for failure to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a

ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING COMPLAINT  
WITHOUT PREJUDICE -- 1

1 prisoner who brings three or more civil actions or appeals which are  
2 dismissed as frivolous or for failure to state a claim will be  
3 precluded from bringing any other civil action or appeal *in forma*  
4 *pauperis* "unless the prisoner is under imminent danger of serious  
5 physical injury." 28 U.S.C. § 1915(g). **Plaintiff is advised to read**  
6 **the new statutory provisions under 28 U.S.C. § 1915. This dismissal**  
7 **of Plaintiff's complaint may count as one of the three dismissals**  
8 **allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to**  
9 **file future claims.**

10 **IT IS SO ORDERED.** The District Court Executive is directed to  
11 enter this Order, forward a copy to Plaintiff at his last known  
12 address, enter judgment, and close the file. The District Court  
13 Executive is further directed to forward a copy of this Order to the  
14 Office of the Attorney General of Washington, Criminal Justice  
15 Division.

16 **DATED** this 26<sup>th</sup> day of February 2007.

17 *S/ Robert H. Whaley*

18 ROBERT H. WHALEY  
19 CHIEF UNITED STATES DISTRICT JUDGE  
20  
21  
22

23 Q:\CIVIL\2006\Carter\6cv318mwl-2-16-dis.wpd  
24  
25  
26  
27